

From: Matthew Blevins
To: SargentsPigeon@aol.com
Date: 12/7/05 1:56PM
Subject: Re: USEC DEIS and 106 Comments

Mr. Sea,

In your November 23 email it was unclear to me whether you were going to provide the text of your comments to the NRC in addition to the ACHP or whether you were just going to provide your comments to the ACHP. If possible, we would appreciate a copy of your comments.

Also, I would like to provide several points of clarification. First, the reason I did not respond to your emails is that I have not received any emails from you between February 14 and November 23. I have kept you "informed of the NRC's implementation of the 106 process" as you requested in your February 14 email by adding you to the NRC's mailing list for all Section 106 correspondence. On August 9 you sent a list of questions to an NRC attorney. I was subsequently provided those questions and promptly replied (email dated August 23). Subsequently, the NRC sent you a letter dated September 9, accepting your request for consulting party status to which we did not receive a reply until October 27, after the DEIS comment period had ended. Finally, my email to you last week, dated November 23, was not intended to be deceptive, rather it was to verify whether you, a designated consulting party, had any additional comments before we provided our findings to the ACHP. (NOTE: all above dates were in 2005).

In terms of Section 106 compliance, we have previously defined an "area of potential effects" (APE) for both direct and indirect effects. The APE does not extend beyond the DOE reservation boundary. However, because you are adjacent to the DOE property we considered potential effects to your property as well as two other nearby properties that are listed on the National Register or the Ohio Historic Inventory. As explained in the DEIS, we assumed that your property would be Register-eligible under two criteria. As you are aware, the DEIS presented the NRC's finding of "no effect on these historic properties". This is fully explained in the DEIS (see page 4-4 to 4-7). The basic premise of this finding is that the existing DOE Gaseous Diffusion Plant is part of the cultural landscape and has been for over 50 years. The proposed ACP would not change that landscape or have other effects on qualities that contribute to the eligibility or potential eligibility of historic properties.

Finally, Section 106 does not require a site visit to each eligible property nor does it require the Federal agency to fund additional studies of eligible properties as you have indicated. Section 106 does require identification of historic properties and a good faith effort to carry out appropriate identification efforts which the NRC has completed. Of course, some of this identification has been provided in your various submittals.

In response to your three questions:

1. The NRC has had no communications with DOE regarding DOE's past actions related to Section 106 compliance. As you are aware, it is the NRC's position that DOE's past actions have no bearing on the NRC's compliance with Section 106.
2. The NRC staff considers that its major Federal action began with the filing of USEC Inc's license application on August 23, 2004. This is also consistent with the 106 regulations which define "undertaking." While the GCEP may be considered a precursor to the ACP the NRC was not involved in the GCEP project as no NRC license was necessary. Additionally, there is no legal requirement under 106 for NRC to consider effects of DOE's past actions on cultural resources nor must NRC consider DOE's Section 106 compliance history. Under Section 106, the "undertaking" before the NRC is whether or not to issue a license to USEC for the proposed ACP and to consider the associated effects on historic and cultural resources that exist today, not twenty years ago.
3. Your objection are noted and we will forward your objections to the ACHP as required by the 106 regulations.

Matthew Blevins
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>>> <SargentsPigeon@aol.com> 11/23/05 10:56 AM >>>

Matthew Blevins
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Mr. Blevins,

I will be sending you my full comments on the DEIS and in regard to my status as consulting party on the Section 106 review on Monday, November 28, following the Thanksgiving holiday. These comments will be forwarded directly to the Advisory Council.

The communication I received from you today, the day before Thanksgiving, is the first communication I have received from you seeking my input as a consulting party on the 106 review. As you know, I first asked to be a consulting party in my comments on the scoping process in January of 2005 and in our face-to-face conversation that followed the scoping hearing in Piketon. However, you did not name me a consulting party, did not send me any of the consulting party correspondence, and did not notify me that the consultation process was underway, despite my requests. In fact, you stopped replying to my e-mails in February of 2005, without explanation. In the summer of 2005, I requested from NRC General Counsel and from the NRC Federal Preservation Officer the name of the official at NRC in charge of the 106 review, and it took weeks and many phone calls before I was even informed that you were the official in charge.

On September 29, at the public hearing on the DEIS, I asked you for the status of my request to be a consulting party, and in my oral comments I pointed out at some length the deficiencies in the NRC effort to identify consulting parties and obtain actual consultation. Among these deficiencies was the fact that no NRC staff had visited the threatened sites in question, nor had any of your staff requested site visits. I told you then that site visits are a mandatory part of assessment and I invited you to visit the Barnes Home and the other nearby threatened sites. No such effort has been made on the part of NRC.

No "package" for the ACHP can be completed until such site visits have been conducted, in real consultation with affected parties including myself.

At the Sept. 29 hearing you informed me that I had been made a consulting party some weeks earlier, and that I had been notified by a letter that you included with a copy of the DEIS. You know that you mailed me three different copies of the DEIS under separate cover. This now appears to have been an intentional deception in hopes that I would not inspect the contents of each

package. If so, it worked. Your last-minute designation of me as a consulting party was in fact a secret one. You could have easily told me by e-mail of the decision, as you have communicated every other time (that I know). But you sent no e-mail, apparently for the express purpose of running the clock.

At this hearing you also engaged me in a conversation in which you attempted to impress me that you had "driven by" my house to look at it from the road. It boggles my mind that the federal official in charge of conducting an impact assessment of a historic property would think that he can accomplish this in a drive-by manner, without even informing the property owner, who supposedly has been identified as a consulting party.

Since you have not come to Sargents to assess the actual situation here at the threatened sites, and since you have not engaged in any real consultation with affected parties, you cannot know what the actual situation is here on the ground. Section 106 provides for taking account of new discoveries that are made during the process of review. It also requires that the agency fund studies of potential impacts on new cultural resources that are identified.

Discoveries related to the impacted historic properties in Sargents are ongoing, and NRC-funded studies of these resources are required. We here in Sargents are ready to show you these impacted properties, and we invite you to come. Among the properties about which you have no clue -- because you haven't come and you have not sought our consultation -- are the actual kill-site of the Sargents Pigeon (recently identified), the old Sargents graveyard, and the Sargents Train Station. It may interest you to know that we have had these, and other properties, assessed by an expert architectural historian. We just await the slightest expression of intent to begin the consultation process on your part.

In addition, it will be necessary to inform all of the other consulting parties of these developments. We note that some of their "sign off" letters were expressly conditional on no further information coming to light.

Will this require a substantial alteration of your plan to "wrap up" the Section 106 review? Yes.

Your attempt to now close the door on the day before Thanksgiving cannot succeed. You have real legal responsibilities under NHPA. Those responsibilities include real consultation, and real consultation means that you actually look at the affected properties, communicate with consulting parties in an open non-deceptive way, and actually fund studies where necessary. All of that is just beginning.

So that we can now get consultation off the ground, I require answers to a few questions, many of which I have asked before with no reply:

1. Please inform me of the full history of communication between NRC and DOE with regard to the centrifuge project's NHPA compliance. Is there any agreement between the agencies for joining the 106 responsibilities of the two agencies? If so, was documentation of this agreement filed with the SHPO and ACHP? If not, what does NRC know about DOE's 106 review? Please provide me with copies of all correspondence between NRC and DOE with regard to NHPA compliance for the centrifuge project.

2. For the purposes of NRC's 106 review, when does NRC consider that "major

federal action" in regard to ACP was initiated? Whatever the answer to this question, please provide the justification for it. Specifically, why is the Gas Centrifuge Enrichment Plant program at Piketon not considered as a precursor to ACP and, hence, the initiation of the federal action now ongoing? Relatedly, has NRC obtained from DOE the documentation of DOE's 106 review for the GCEP program? If not, why not (since it was a virtually identical program)? If so, please forward that documentation to me.

3. As a consulting party and as previously stated, I hereby object to the NRC decision to fold its Section 106 review into the NEPA EIS process. I do not believe that this was done legally or properly. This is a classic case of need for an independent Section 106 review that can proceed even after the EIS process has been concluded, in part to take account of ongoing discoveries. How does NRC intend to handle this objection?

Thank you for attention to these matters. Enjoy the holiday.

Sincerely,

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Subject: Re: USEC DEIS and 106 Comments
Creation Date: 12/7/05 1:56PM
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Created By: mxb6@nrc.gov

Recipients	Action	Date & Time
aol.com	Transferred	12/07/05 1:57 PM
SargentsPigeon		

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twf4_po.TWFN_DO	Delivered	12/07/05 1:56 PM
MXB6 BC (Matthew Blevins)	Opened	12/13/05 4:40 PM

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Files	Size	Date & Time
MESSAGE	11273	12/07/05 01:56PM

Options

Auto Delete: No
Expiration Date: None
Notify Recipients: Yes
Priority: Standard
Reply Requested: No
Return Notification:
Send Mail Receipt when Undeliverable

Concealed Subject: No
Security: Standard

To Be Delivered: Immediate
Status Tracking: Delivered & Opened